

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Crown Simpson Pulp Co. )  
and Louisiana Pacific Corporation for )  
Review of Orders Nos. 74-211 (NPDES )  
No. CA0005282) and 74-213 (NPDES Nos. ) Order No. WQ 75-31  
CA0005894 and CA0005908) of the )  
California Regional Water Quality )  
Control Board, North Coast Region )  
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BY BOARD VICE CHAIRMAN MAUGHAN:

On January 2, 1975, Louisiana Pacific Corporation (Louisiana Pacific) petitioned the State Water Resources Control Board (State Board) to review Order No. 74-213 of the California Regional Water Quality Control Board, North Coast Region (Regional Board). Order No. 74-213 was adopted on December 4, 1974, and prescribes waste discharge requirements for Louisiana Pacific's market pulp mill (NPDES No. CA0005894), and sawmill (NPDES No. CA0005908) complex located at Samoa, Humboldt County.

On January 3, 1975, Crown Simpson Pulp Company (Crown Simpson) petitioned the State Board to review Order No. 74-211 of the Regional Board. Order No. 74-211 was adopted on December 4, 1974, and prescribes waste discharge requirements (NPDES No. CA0005282) for Crown Simpson's market pulp mill located on the Samoa Peninsula, Humboldt County.

Louisiana Pacific and Crown Simpson are hereinafter jointly referred to as "Petitioners".

The Environmental Protection Agency (EPA) submitted a letter dated December 13, 1974, objecting to the permits adopted by the Regional Board. The basis of EPA's objection was that the permits did not specify best practicable control technology currently available as required by Section 301(b) of the Federal Water Pollution Control Act Amendments of 1972, hereafter referred to as the Federal Act. EPA further stated that "Objection to issuance of the permits will be terminated upon issuance of permits containing effluent limitations for biochemical oxygen demand (BOD), suspended solids, and phenols which are based upon best practicable control technology currently available."

On March 7, 1975, the State Board held a hearing for the purpose of receiving evidence relative to the appropriateness of Orders Nos. 74-211 and 74-213 by the Regional Board. The orders were consolidated for the purpose of the hearing due to the similarity of issues.

#### I. BACKGROUND

Petitioners each operate bleached kraft pulp mills on the Samoa Peninsula, located on the westside of Humboldt Bay. Both pulp mills, which are of similar size, discharge their effluent to the Pacific Ocean through outfalls with diffusers. Each outfall is approximately 2,500 feet long and discharges into waters 30-40 feet deep. The outfalls are located nearly a mile apart.

Each mill produces roughly 600 air dry tons per day of bleached kraft pulp. In addition, Louisiana Pacific operates a saw and plywood mill which produced nearly 500,000 board feet per day of lumber.

Petitioners each discharge from 25 to 30 mgd of process wastewater to the Pacific Ocean. Both mills practice internal control technology for the recovery of chemicals, fiber, and by-products. Except for an outfall and diffuser, neither plant has external wastewater treatment.

Specifically, Louisiana Pacific objects to effluent limitations on pH, turbidity, settleable solids, and heavy metals, particularly chromium and nickel. In addition, Louisiana Pacific objected to the testing procedures for grease and oil and phenolic compounds specified in Order No. 74-213.

The objections of Crown Simpson to Order No. 74-211 include:

1) Exceeding the suspended solids, pH, phenolic compounds, chromium, and settleable solids limitations which limitations are based upon the Ocean Plan, will not adversely affect the beneficial uses of the Pacific Ocean and the relationship between the Ocean Plan effluent requirements and beneficial uses is not based upon competent evidence.<sup>1/</sup>

2) Footnote "f" of Order No. 74-211 is improper, inappropriate, and should be eliminated. (Footnote "f" relates to BOD limitations for the Crown Simpson discharge.)

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<sup>1/</sup> Water Quality Control Plan, Ocean Waters of California

The actual numerical limitation was omitted from Order No. 74-211 pending development of final guideline limitations by EPA.)

3) Effluent limitations on flow, settleable solids, grease and oil, turbidity, and pH are improper and inappropriate.

4) Effluent limitations placed upon chromium, copper, lead, nickel, and phenolic compounds are improper and inappropriate.

5) Limitations placed upon the transmittance of natural light in the receiving water are improper and inappropriate.

6) Limitations expressed in concentration amounts rather than mass emission limitations are improper and inappropriate.

Petitioners each submitted a post-hearing memorandum to the State Board. In summary, they objected to effluent limitations which would require the installation of secondary treatment which will probably be required for best practicable control technology currently available. The petitioners claim Section 403 of the Federal Act was intended to surplant the requirements of Section 301 of the Federal Act for ocean discharges.

EPA objected to Orders Nos. 74-211 and 74-213 on the basis that the Regional Board failed to implement fully the provisions of Section 301 of the Federal Act by not placing effluent limitations which would require achievement of "Best

Practicable Control Technology Currently Available" prior to July 1, 1977. EPA stated that its objection to the permits would be terminated if effluent limitations would be based on Interim Effluent Guidance for NPDES Permits, U. S. Environmental Protection Agency.

The effluent limitations contained within Orders Nos. 74-211 and 74-213 for Crown Simpson's and Louisiana Pacific's discharges, respectively, were primarily based on the provisions of the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) adopted by the State Water Resources Control Board in July 1972. However, the Regional Board qualified its orders by stating that its orders would be amended to require best practicable control technology currently available when appropriate guidelines defining the meaning of this term were promulgated by EPA.

## II. CONTENTIONS AND FINDINGS

Both petitioners generally allege that the action of the Regional Board in adoption of Orders Nos. 74-211 and 74-213 was inappropriate and improper, and unsupported by available evidence. The contentions of the petitioners and our findings relative thereto are as follows:

1. Contention: The inclusion of footnote "f" in the waste discharge requirements was inappropriate and improper. Footnote "f" states:

"The final numbers (effluent limits for BOD) have been intentionally omitted pending development of final guideline figures on this subject by EPA for BOD limitations on ocean discharges."

Findings: The Regional Board, at its hearing of December 4, 1974, to consider adoption of the permits for Petitioners, was reluctant to adopt effluent limitations for BOD and suspended solids based on interim guidance documents developed by EPA. Substantial cause did exist for the Regional Board to hesitate in specifying effluent limitations based on such interim guidance documents. The final effluent limitations guidelines have often substantially differed from interim guidance.

The term "interim guidance" applies to suggestions developed by EPA regarding the effluent limitations which are achievable through various control strategies for specific industrial categories. These guidance documents were generally developed prior to the passage of the Federal Act and were neither formally noticed for comment or promulgated by EPA.

After the passage of the Federal Act, but prior to promulgation of effluent limitations guidelines for an industrial category, a draft development document is prepared by an EPA contractor charged with studying the specific category involved. A contractor's development document has been published for the category, Pulp, Paper, and Paperboard Industry. This draft development document includes the subcategory of bleached kraft mills. The recommended effluent limitations for best practicable control technology currently available in the draft development document are 9.0 pounds BOD/ton of product and 21.2 pounds of total suspended solids (TSS)/ton of product for the maximum monthly average. The interim guidance document, to

the contrary, recommended effluent limitations of 11 pounds of BOD/ton of product and 10 pounds of TSS/ton of product for the monthly average. The limitations in the two documents compare closely for BOD, but are quite different for TSS.

Crown Simpson presented testimony at the hearing which indicated that the limitation on TSS in the interim guidance document was determined by using nonstandard test methods. Its testimony is supported by a study performed by the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), A Preliminary Review of Analytical Methods for the Determination of Suspended Solids in Paper Industry Effluent for Compliance with EPA - NPDES Permit Terms. This study shows the differences in test results from using various sizes and types of filter media and procedures. For example, glass fiber filters generally capture more solids than the cellulose filters that were commonly used by the paper industry. A standard test method was used in developing the effluent limitations contained in the contractor's draft development document (21.2 lbs/ton), and thus they appear to have a more sound technical base than those recommended in the "Interim Guidance" developed by EPA.

The Federal Act and the associated legislative history stress the Congressional intent that standards based upon attainability such as "Best Practicable Control Technology Currently Available" are to be employed uniformly nationally to similar discharges to reduce problems associated with unfair competition resulting from varying water pollution requirements.

To accomplish this goal, Congress directed the Administrator of EPA to issue guidelines pursuant to Section 304 of the Federal Act defining the meaning of best practicable control technology currently available for specific industrial categories. Congress directed the Administrator to complete this task within one year from the date of enactment of the legislation. In the absence of promulgated effluent guidelines, it is apparent that if each permitting agency seeks to formulate its own limitations on a case-by-case basis, certain differences will result and such differences may result in inequitable competitive advantages which Congress sought to eliminate.

Nonetheless, Congress in adopting the Federal Act did not require that effluent guidelines in accordance with Section 304 of the Federal Act be available prior to permit issuance. Instead, Congress included in Section 402(a)(1) the following language:

"Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act." (Emphasis Added).

We believe that Congress recognized that the issuance of permits would, in some cases, precede the issuance of necessary guidelines and apparently felt that this should occur even if the elimination of unfair competition resulting from differing effluent limits had to be temporarily sacrificed.

Therefore, the State Board can only conclude that it is the responsibility of the Regional Board, as the permitting authority, to define the meaning of "Best Practicable Control Technology Currently Available" when final promulgated guidelines required by Section 304 of the Act are not available. The Regional Board should make its decision based upon all available information including EPA interim guidance documents, any contractor's development documents, or any proposed guidelines. However, we find that there is no legal requirement to utilize any specific document, publication, guidance, or other directive other than finally promulgated effluent guidelines. The Regional Board, as the agency having full and complete responsibility in absence of promulgated guidelines, should exercise its own independent judgment in defining the meaning of the term "Best Practicable Control Technology Currently Available" under such circumstances as the instant case.

2. Contention: The petitioners argue that Congress intended the ocean discharge criteria contained in Section 403 of the Federal Act to be the only standard contained in the Federal Act which would apply to ocean discharges and that because such criteria had not been formally promulgated, there existed no federal regulations directly pertaining to the subject discharges.

Findings: A review of the legislative history regarding Section 403 of the Federal Act reveals that Congress enacted Section 403 in conjunction with the requirements of

Section 301. The legislative history of the Federal Act states in part:

"The Committee [Senate Committee on Public Works] has established a framework to control the discharge of pollutants into navigable waters and from pipelines beyond the territorial seas in Sections 301, 402, and 403."<sup>2/</sup>

In addition, the ocean discharge criteria required by Section 403 has been promulgated by EPA and is contained in Title 40, Part 220, Code of Federal Regulations. It is the Board's conclusion that the most stringent requirements of either Section 403 or Section 301 should apply.

3. Contention: Petitioners argue that the BOD removal is unnecessary for discharges to the ocean where relatively high degrees of dilution are obtained.

Findings: Section 301 of the Federal Act establishes a standard for "Best Practicable Control Technology Currently Available" to be achieved by nonpublicly owned discharges by July 1, 1977. In defining "Best Practicable Control Technology Currently Available" the Administrator of EPA has required uniform application of effluent limitation guidelines regardless of the body of water which receives the discharge. The interim guidance document produced by EPA, the contractor's development document, and the proposed effluent limitation guidelines for the market kraft pulp industrial subcategory have not provided that effluent limitations may vary by the type or nature of the receiving water. EPA has in the past maintained that the standards of attainability contained in Section 301 of the Federal Act should be uniformly administered without regard to

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<sup>2/</sup> A Legislative History of the Water Pollution Control Act Amendments of 1972, Vol. 2, page 1492.

the type of receiving water so that the costs in achieving such standards are equally distributed and unfair competitive advantages resulting from varying water quality requirements are eliminated.

The State Board based upon all available information must conclude that secondary type treatment represents a practicable control technology applicable to the market pulp mill industrial subcategory. BOD is a critical design and operational parameter for this type of treatment and as such should be limited in the waste discharge requirements.

4. Contention: The Petitioners allege that certain effluent limitations contained in the Regional Board orders are arbitrary and unsupported by available scientific evidence.

Findings: The effluent limitations referred to by the Petitioners are limitations which were included in the orders by the Regional Board because such limitations are contained in the Ocean Plan. (See Footnote 1/.) The California Water Code, Section 13170, allows the State Board to adopt water quality control plans and states that such plans supersede any regional water quality control plans which govern the same waters. An addition, Section 13263 of the Water Code requires the Regional Boards to implement relevant water quality control plans in prescribing waste discharge requirements. Hence, the Regional Board did not err in including effluent limitations contained in the Ocean Plan. In fact, the Regional Board was under a statutory requirement to incorporate such limitations.

Many of the Petitioners' arguments, however, were impressive and as a result of these arguments and other factors, the State Board is proceeding to review the Ocean Plan in a number of areas. However, prior to any amendment of such plan, the Board will review the available alternatives and technical information and will hold extensive public hearings. The Ocean Plan, however, does provide partial relief to the Petitioners in the implementation schedule contained in State Board Resolution No. 74-5 adopted January 17, 1974. This Resolution states in part:

- "1. The effective date of Table B, Chapter IV, is July 1, 1978;
- "2. Waste discharge requirements issued to dischargers to ocean waters shall require compliance with Water Code Section 13379 not later than July 1, 1977;
- "3. If it can be conclusively demonstrated by any discharger to ocean waters that the treatment process required by Water Code Section 13379(a) and (b) to meet waste discharge requirements plus source control will not result in complete compliance with effluent quality requirements contained in Table B, Chapter IV of this plan by July 1, 1978, the State Board may allow additional time for compliance not to exceed July 1, 1983."

The question, however, remains regarding the difficulties that the Petitioners may have in complying with the effluent limitations contained in Table A of the Plan. Under Chapter VI, part D of the Ocean Plan language is included which permits the Regional Board to grant less restrictive requirements than those established in Table A upon a showing by the discharger that less restrictive requirements will comply with the receiving water objectives contained in Chapter II of the Plan and Table B limitations. Recognizing that the implementation

schedule adopted by the State Board permits an extended compliance date for Table B limitations, the Regional Board has the power to accept a demonstration of compliance with water quality objectives and a plan for compliance with Table B limitations as a prerequisite for granting less stringent requirements for Table A effluent limitation. The key consideration in granting less stringent requirements than those contained in Table A is whether the alternative less stringent requirements will provide for compliance with applicable water quality objectives for ocean waters and not serve to interfere with the ultimate attainment of those limitations contained in Table B of the Plan. The Board concludes that the discharger may prepare material illustrating whether less stringent limitations than those contained in Table A of the Plan are sufficient to meet applicable water quality objectives set forth in Chapter II of the Plan. The Regional Board may consider this evidence and take actions which it considers appropriate in accordance with the provisions of the Ocean Plan.

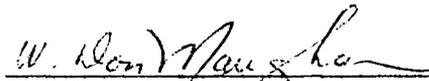
### III. CONCLUSIONS

After review of the entire record, and for the reasons hereto expressed, the State Board concludes that the action of the Regional Board in adopting Orders Nos. 74-211 and 74-213 was inappropriate and improper because the Regional Board failed to exercise its authority in not including certain effluent limitations based upon its independent judgement of what actually constitutes the best practicable control technology currently available.

IV. ORDER

IT IS HEREBY ORDERED that Orders Nos. 74-211 and 74-213 be remanded to the Regional Board to include effluent requirements based on the best practicable control technology currently available and consideration of the other findings herein. In deriving such requirements the Regional Board shall utilize all available information including EPA interim guidance, contractor's development documents, and proposed guidelines. If formally promulgated effluent guidelines are available prior to the time the Regional Board resolves this matter, such guidelines shall, of course, remove the necessity for the Regional Board to exercise independent judgment in this matter.

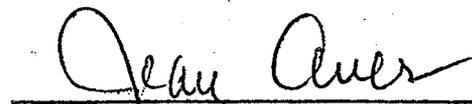
Date: DEC 18 1975

  
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W. Don Maughan  
Vice Chairman

WE CONCUR:

  
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W. W. Adams, Chairman

  
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Roy E. Dodson, Member

  
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Jean Auer, Member